

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

| | | |
|-------------------------------|---|-----------------|
| BEAVER-ELKHORN WATER DISTRICT |) | |
| |) | |
| _____ |) | CASE NO. 96-596 |
| |) | |
| ALLEGED VIOLATION OF |) | |
| COMMISSION'S ORDER |) | |

O R D E R

Beaver-Elkhorn Water District is a water district created pursuant to Chapter 74 of the Kentucky Revised Statutes which owns, controls, and operates facilities used for the distribution of water to the public for compensation in Floyd County, Kentucky. As such, it is a utility subject to the jurisdiction of the Public Service Commission pursuant to KRS 278.010(3)(d).

On June 13, 1995, Beaver-Elkhorn filed an application for a Certificate of Public Convenience and Necessity to construct a waterworks improvement project, for approval of financing, and for an increase in rates. The Commission docketed this application as Case No. 95-200.¹ During the course of review, Commission Staff noted that while information filed by Beaver-Elkhorn's engineer indicated that reliable and adequate

¹ Case No. 95-200, The Application of Beaver-Elkhorn Water District For (1) Certificate of Public Convenience and Necessity - Construction - Phase III Water Line Extensions Pursuant to KRS 278.020(1); (2) Authorization of Borrowing From the Commonwealth of Kentucky, Kentucky Infrastructure Authority Water Resources Loan Fund - Phase III Pursuant to KRS 278.300 and Grant of \$600,000 and From Abandoned Mine Land - \$540,000; (3) Authority to Increase Rates Pursuant to 807 KAR 5:001, Section 10; and (4) Approval of Revised Tariff. Final Orders issued September 15, 1995, and January 19, 1996.

service could be provided in the proposed project area, this same information indicated that low pressure areas might be experienced in areas of Beaver-Elkhorn's existing distribution system.² Because of this, Beaver-Elkhorn purportedly contracted with its engineer to analyze the low pressure areas and to identify potential solutions.

On September 15, 1995, the Commission issued an Order in Case No. 95-200 which, inter alia, directed Beaver-Elkhorn to file a copy of the engineer's report regarding the low pressure areas. This report was to have been filed with the Commission by July

² Pursuant to 807 KAR 5:066, Section 5(1),

Each utility shall, subject to the approval of the commission, adopt and maintain a standard pressure in its distribution system at locations to be designated as the point or points of "standard pressure." The selection of such points shall be confined to locations fairly representative of average conditions. In selecting points for fixed standard pressure, a utility may divide its distribution system into districts if division is necessary due to differences of elevation or loss of pressure because of friction, or both, and may either adopt a standard pressure for each division or establish a single standard pressure for its distribution system as a whole. In no case shall the constant difference between the highest and lowest pressures in a district for which a standard has been adopted exceed fifty (50) percent of such standard. In the interpretation of this rule it shall be understood that in districts of widely varying elevations or low customer density a utility may undertake to furnish a service which does not comply with the foregoing specifications if the customer is fully advised of the conditions under which average service may be expected. It shall be understood that nothing shall prevent the commission from requiring improvements when, upon investigation, it appears right and proper that such betterments should be made. In no event, however, shall the pressure at the customer's service pipe under normal conditions fall below thirty (30) psig nor shall the static pressure exceed 150 psig. [Emphasis added.]

1, 1996. To date, despite reminder letters and the efforts of Commission Staff, the engineer's report in question has not been filed with the Commission. This is a violation of the Commission's September 15, 1995 Order. Furthermore, if there remain areas of Beaver-Elkhorn's system with pressures at customers' service pipes under normal conditions below 30 psig, Beaver-Elkhorn is in violation of 807 KAR 5:066, Section 5(1), as well. There having been no information filed to indicate otherwise, it must be assumed that these low pressure areas do still exist. Pursuant to KRS 278.990(1),

If any utility willfully violates any of the provisions of this chapter or any regulation promulgated pursuant to this chapter, or does any act therein prohibited, or fails to perform any duty imposed upon it under those sections for which no penalty has been provided by law, or fails to obey any order of the commission from which all rights of appeal have been exhausted, the utility shall be subject to a civil penalty to be assessed by the commission for each offense not less than twenty-five dollars (\$25.00) nor more than two thousand five hundred dollars (\$2,500). Each act, omission, or failure by an officer, agent, or other person acting for or employed by a utility and acting within the scope of his employment shall be deemed to be the act, omission, or failure of the utility. [Emphasis added.]

As a prima facie showing has been made that Beaver-Elkhorn is in violation of a Commission Order, as well as 807 KAR 5:066, Section 5(1), the Commission, on its own motion, HEREBY ORDERS that:

1. Beaver-Elkhorn shall appear before the Commission on January 30, 1997, at 10:00 a.m., Eastern Standard Time, in Hearing Room 1 of the Commission's offices at 730 Schenkel Lane, Frankfort, Kentucky, for the purpose of presenting evidence concerning the alleged violation of the Commission's Order of September 15, 1995 in Case No. 95-200 which directed Beaver-Elkhorn to file a copy of the engineer's report

regarding the low pressure areas of Beaver-Elkhorn's distribution system, and for its violation of 807 KAR 5:066, Section 5(1).

2. Beaver-Elkhorn shall submit to the Commission, within 20 days of the date of this Order, a written response to the allegations contained herein.


3. The Commission's Order of September 15, 1995 in Case No. 95-200, which is appended hereto, is made part of the record of this proceeding.

4. Any motion requesting an informal conference with Commission Staff to consider the simplification of issues or any other matters which may aid in the handling or disposition of this proceeding shall be filed with the Commission no later than 20 days from the date of this Order.


5. The engineer's report in question may be filed by Beaver-Elkhorn at any time during the course of this proceeding.

Done at Frankfort, Kentucky, this 19th day of December, 1996.

PUBLIC SERVICE COMMISSION


Chairman


Vice Chairman


Commissioner

ATTEST:


Executive Director

APPENDIX

APPENDIX TO AN ORDER OF THE KENTUCKY PUBLIC SERVICE
COMMISSION IN CASE NO. 96- 596 DATED DECEMBER 19, 1996

COMMONWEALTH OF KENTUCKY

BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

| | | |
|--|---|----------|
| THE APPLICATION OF BEAVER-ELKHORN WATER |) | |
| DISTRICT FOR (1) CERTIFICATE OF PUBLIC |) | |
| CONVENIENCE AND NECESSITY - CONSTRUCTION - |) | |
| PHASE III WATER LINE EXTENSIONS PURSUANT |) | |
| TO KRS 278.010 (1); (2) AUTHORIZATION OF |) | CASE NO. |
| BORROWING FROM THE COMMONWEALTH OF KENTUCKY, |) | 95-200 |
| KENTUCKY INFRASTRUCTURE AUTHORITY WATER |) | |
| RESOURCES LOAN FUND - PHASE III PURSUANT TO |) | |
| KRS 278.300 AND GRANT OF \$600,000 AND FROM |) | |
| ABANDONED MINE LAND - \$540,000; (3) AUTHORITY |) | |
| TO INCREASE RATES PURSUANT TO 807 KAR 5:001; |) | |
| SECTION 10; AND (4) APPROVAL OF REVISED TARIFF |) | |

O R D E R

Beaver-Elkhorn Water District ("Beaver-Elkhorn") filed its application on June 13, 1995 for a Certificate of Public Convenience and Necessity to construct a \$4,349,011 waterworks improvement project, for approval of financing, and for an adjustment to its retail rates. This project will extend water to 747 additional customers and make water distribution system improvements as well as provide additional water storage capacity. Funding for the proposed project includes a \$2,847,807 loan from the Kentucky Infrastructure Authority ("KIA"), a \$600,000 KIA grant and a \$901,204 Abandoned Mine Lands ("AML") Grant from the Natural Resources and Environmental Protection Cabinet.

Beaver-Elkhorn now moves for an Interim Order which grants a Certificate of Public Convenience and Necessity for the proposed construction.

This Order will address the construction and financing portion of the application. By subsequent Order in this case, the Commission will address the rates necessary to provide the utility with an opportunity to recover its reasonable operating costs, service its debt, and provide a reasonable surplus for equity growth.

After review of the evidence of the record and being otherwise sufficiently advised, the Commission finds that:

1. Beaver-Elkhorn proposes to construct water main replacements, water main extensions, 3 pump stations, and 3 water storage tanks to be located at Floyd County, Kentucky.

2. Drawings and specifications for the proposed construction were prepared by Howard K. Bell Consulting Engineers, Inc. ("Engineer") and have been approved by the Division of Water, Kentucky Natural Resources and Environmental Protection Cabinet.

3. The Engineer has provided information which indicates that reliable and adequate service can be provided in the proposed project area. However this information also indicates that low pressure may be experienced in areas of the existing distribution system. As a result of this information, Beaver-Elkhorn has contracted with the Engineer to analyze the low pressure areas and identify potential solutions.

4. Beaver-Elkhorn should file a copy of the Engineer's report as outlined in Finding 3 with the Commission by July 1, 1996.

5. With the anticipated filing of the report as outlined in Findings 3 and 4, public convenience and necessity require that the construction identified in Beaver-Elkhorn's application be performed and that a Certificate of Public Convenience and Necessity be granted.

6. The financing plan proposed by Beaver-Elkhorn is for lawful objects within the corporate purpose of its utility operation, is necessary and appropriate for and consistent with the proper performance of the utility's service to the public and will not impair its ability to perform that service, and is reasonably necessary and appropriate for such purpose. It should, therefore, be approved.

IT IS THEREFORE ORDERED that:

1. Beaver-Elkhorn's motion for an Interim Order is granted.
2. Beaver-Elkhorn be and it hereby is granted a Certificate of Public Convenience and Necessity to proceed with the proposed construction project as set forth in the drawings and specifications of record herein, provided that Beaver-Elkhorn files the information outlined in Finding 3.
3. Beaver-Elkhorn shall file a copy of the Engineer's report as outlined in Finding 3 with the Commission by July 1, 1996.
4. Beaver-Elkhorn shall monitor the adequacies of the expanded water distribution system after construction. If the level of service is inadequate or declining or the pressure to any customer is outside the requirements of 807 KAR 5:066, Section 5(1), Beaver-Elkhorn shall take immediate action to maintain the

level of service in conformance with the regulations of the Commission.

5. Beaver-Elkhorn shall only install fire hydrants in those instances where the installation complies with the requirements of 807 KAR 5:066, Section 10(2)(b).

6. Beaver-Elkhorn shall obtain approval from the Commission prior to performing any additional construction not expressly authorized by this Order.

7. Any deviation from the construction approved shall be undertaken only with the prior approval of the Commission.

8. Beaver-Elkhorn shall furnish documentation of the total costs of this project including the cost of construction and all other capitalized costs (engineering, legal, administrative, etc.) within 60 days of the date that construction is substantially completed. Construction costs should be classified into appropriate plant accounts in accordance with the Uniform System of Accounts for Water Utilities prescribed by the Commission.

9. Beaver-Elkhorn shall require construction to be inspected under the general supervision of a professional engineer with a Kentucky registration in civil or mechanical engineering, to ensure that the construction work is done in accordance with the contract drawings and specifications and in conformance with the best practices of the construction trades involved in the project.

10. Beaver-Elkhorn shall furnish, within 60 days of the date of substantial completion of this construction, a copy of "as-built" drawings and a signed statement that the construction has

been satisfactorily completed in accordance with the contract plans and specifications.

11. The financing plan proposed by Beaver-Elkhorn be and it hereby is approved.

12. Nothing contained herein shall be construed as constituting approval of any other portion of Beaver-Elkhorn's application.

13. Beaver-Elkhorn's application for adjustments to retail rates is continued generally.

Nothing contained herein shall be deemed a warranty of the Commonwealth of Kentucky, or any agency thereof, of the financing herein accepted.

Done at Frankfort, Kentucky, this 15th day of September, 1995.

By the Commission

ATTEST:


Executive Director